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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

MARLENA BARRERA,

Defendant and Appellant.

A159344

(Napa County  
Case Nos. 19CR001783,  
19CR002987)

Pursuant to a plea agreement, defendant Marlena Barrera entered no contest pleas to three felonies in two cases. In case No. 19CR001783, she pled no contest to one count of felony child endangerment, in violation of Penal Code<sup>1</sup> section 273a, subdivision (a), and one count of maintaining a place for selling or using a controlled substance, in violation of Health and Safety Code section 11366. In case No. 19CR002987, she pled no contest to one count of embezzlement of more than \$950, in violation of section 503. Defendant was on felony probation from an earlier embezzlement conviction at the time of the new cases.

She was sentenced to a total term of three years in state prison, representing the upper term on the embezzlement charge, with concurrent

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

two-year sentences on the child endangerment and controlled substance charges. Her counsel filed an opening brief asking that this court conduct an independent review of the record for arguable issues—i.e., those that are not frivolous, as required by *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Counsel also informed defendant that she had the right to file a supplemental brief on her own behalf, but defendant declined to do so. We conclude there are no meritorious issues and affirm the judgment.

### **BACKGROUND**

Defendant was on felony probation with a search condition for a prior embezzlement conviction and was under investigation for embezzlement from Rios Farming, where she had been employed as a clerk for several years.

#### **Case No. 19CR001783**

On June 20, 2019, officers conducted a probation search at the home she shared with her husband and three children, ages 15, 13, and four. In the master bedroom, which defendant and her husband shared with their youngest child, officers found four guns (including an AR-15 rifle), loaded magazines, a large amount of additional ammunition, a methamphetamine bong, a digital scale, one-inch-by-one-inch baggies, and four methamphetamine pipes. Officers found methamphetamine and additional one-inch-by-one-inch baggies in two other parts of the house to which the children had access. The total amount of methamphetamine (net of packaging) exceeded 24 grams. Methamphetamine residue was located on the nightstand near a toddler bed in the master bedroom. Hair samples were collected from the children, and all three children's hair tested positive for methamphetamine.

### **Case No. 19CR002987**

The manager of Rios Farming discovered that defendant had made numerous unauthorized purchases using company credit cards, with many items delivered to defendant's home. The owner of the company reported that his personal credit card had also been used to make numerous unauthorized purchases. When confronted by law enforcement, defendant initially claimed that the owner allowed her to make the purchases. She eventually admitted to making unauthorized purchases using the company credit card but believed the amount was around \$3,000; in fact, the total loss amount was \$33,740.12.

### **Charges, Pleas, and Sentencing**

She was charged in case No. 19CR001783 with multiple counts relating to the search of her home. In case No. 19CR002987, she was charged with multiple counts relating to her theft from Rios Farming. Pursuant to a plea agreement with a four-year "lid" covering both cases, defendant pled no contest to three felonies: one count of child endangerment, one count of maintaining a place for selling or using a controlled substance, and one count of embezzlement of more than \$950.

The court sentenced defendant to three years in state prison on the embezzlement count, with two-year terms on the child endangerment and drug charges running concurrent to each other and the embezzlement charge. The court terminated defendant's prior grant of probation as unsuccessful. The court waived \$560 in fees relating to preparation of the presentence report, and imposed restitution fines in the amount of \$600 (\$300 per case), \$120 in court security fees (\$40 per count of conviction), and \$90 in criminal conviction assessments (\$30 per count of conviction). (§ 1202.4, subd. (b);

§ 1465.8; Gov. Code § 70373.) The court also ordered defendant to pay restitution to the owner of Rios Farming in the amount of \$33,740.12.

Defense counsel did not object to the imposition of fines and fees based on ability to pay, and the record indicates that defendant had a consistent history of employment, owned two cars with her husband, was receiving disability payments of \$200 per month, and had been living in the same home for nine years.

### DISCUSSION

Defendant's counsel filed a *Wende* brief, requesting that we independently review the record to determine whether it contains any arguable issues for appeal. Our review establishes that there are no meritorious issues to be argued.

Defendant was properly advised before entering her no contest pleas and stipulating to a factual basis for the pleas. The sentence was consistent with the plea agreement and it represents an appropriate exercise of the court's discretion in light of the serious nature of defendant's conduct and her criminal history. (*People v. Sandoval* (2007) 41 Cal.4th 825, 847 [reviewing for abuse of discretion sentencing decisions, which must be based on “‘individualized consideration of the offense, the offender, and the public interest’ ”].)

There is no issue regarding the fines and fees imposed by the court, as counsel did not object pursuant to *People v. Dueñas* (2019) 30 Cal.App.5th 1157, 1173. Moreover, any objection would have been meritless, given defendant's employment history, assets, and disability income.

Having examined the record to ensure that defendant receives effective appellate review, we find no basis for reversal of the conviction. (*Wende, supra*, 25 Cal.3d 436.)

## DISPOSITION

The judgment is affirmed.

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BROWN, J.

WE CONCUR:

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POLLAK, P. J.

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TUCHER, J.